IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-06-2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

WRIT PETITION No.10099 OF 2004

Management,
Malaysian Airlines,
Karumuttu Centre,
498, Anna Salai,
Chennai-35. ... Petitioner

-vs-

1.The Presiding Officer,
Principal Labour Court,
Chennai-600 104.

2.K.Balu ...Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records of the first respondent relating to I.D.No.579 of 1993 and quash the award dated 30.01.2004

For petitioner : Mr.S.B.S.Raman for
M/s.SBS Raman & Associates

For respondent 2 : Mr.Prakash Goklaney

O R D E R

The management of Malaysian Airlines at Chennai has filed this Writ Petition, challenging the award of the Labour Court, seeking to call for the records on the file of the Presiding Officer, Principal Labour Court, Chennai, first respondent herein, relating to I.D.No.579 of 1993 and to quash the award, dated 30.01.2004, made therein.

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2. According to the petitioner, the second respondent/workman filed an application under Section 2 (A) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act") before the Principal Labour Court, Chennai, (hereinafter referred to as "the Labour Court") in I.D.No.579 of 1993, claiming that he was employed as a Traffic Assistant with effect from 04.07.1987 and the said workman was stopped from work on 07.04.1993 without any notice or compensation and that his non-employment was not justified.

3. It is the further case of the petitioner that the Attendance Register, which is maintained in the usual course and which covers the period from 1989 to 1997 marked as Ex.M-1 shows that the second respondent has not signed in the register for even a single day and the evidence of M.W.1, the management witness, is that at the relevant point of time the petitioner was operating from the old Meenambakkam Airport, that of the four weekly flights in the schedule, one flight on Saturdays was a night flight; that flight sometimes was of Air India, who were the ground handling agents of the petitioner management. Because they were short-staffed to handle the night flight and the petitioner had a pool of casuals, they would intermittently call for hands to assist in handling the night flight once in a week. It is for the security reasons, the entry of staff into the operational areas of the Airport is regulated by the Airport Authority. The permanent staff are issued Permanent Photo-ID Cards and casuals are issued Temporary Passes and the said passes cannot be secured at short notice when the casuals actually needed. Therefore, these passes were obtained for periods covering three to six months and issued to the casuals to enable them to enter the operational area whenever their services were actually required.

4. It is also the case of the petitioner that the second respondent had a provisional store in Nanganallur and he would be informed over phone whenever Air India were short of manpower and the services of the second respondent were required. The handling of the flight would take four hours and the second respondent would be required to retrieve the fire-proof blanket provided to passengers for their use during the flight if they did not return the same while leaving the aircraft and assist with loading, unloading and identification of baggage. The second respondent was one in a pool of casual workmen, who were intermittently called to work and he would utmost have worked five days in a month and he would paid at

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the rate of Rs.100/- per day and later Rs.150/- per day whenever his assistance was required and the payment depending on the number of days actually worked would vary from month to month and would be made by MW-1 from out of Petty Cash. The authority to employ permanent staff was vested with the Area Manager of the petitioner and the Airport Manager was only authorised to engage casual staff. The casuals, who were intermittently employed to meet emergencies, did not enjoy any privileges. In the above circumstances, the second respondent workman had not actually worked for 240 days in 12 month period or 120 days in 6 month period, to attract the provisions of Section 25 B of the Industrial Disputes Act, which is a pre-condition for application of Section 25 F of the Act.

5. Earlier, the first respondent Labour Court passed an award, dated 22.08.1996, dismissing the application filed by the workman and the same was challenged by the second respondent/workman in W.P.No.1958 of 1997. This Court, by its order, dated 28.10.2003, set aside the award and passed the following direction:

> "The award impugned is set aside and the dispute is remitted back to the second respondent for holding a de nono enquiry as to the question relating to the justification of the non-employment of the petitioner. It is however made clear that the question that the petitioner was a workman of the first respondent is fully established and therefore the scope of any further enquiry by the second respondent should only be on the question as regards the justification of the non-employment. It is open for the first respondent to substantiate its stand in the counter filed before the second respondent namely that the petitioner was not in continuous service so as to attract compliance of Section 25F of the Industrial Disputes Act or that his non-employment was otherwise justified."

6. In the remand enquiry, the petitioner was examined as M.W.1 and Ex.M-1 (Attendance Register of employees in the Airport) was also marked. The second respondent did not choose to examine himself or mark any additional documents.

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7. It is the further case of the petitioner that the first respondent Labour Court has passed the impugned award in an application made by the petitioner under Section 2 (A) of the Act on 30.01.2004, holding that the non-employment of the petitioner was not justified and the petitioner was entitled to the relief of reinstatement with back wages and all other attendant benefits.

8. The said award has been assailed in this Writ Petition, on the ground that the Labour Court has ignored the evidence, oral and documentary, and the scope of the de novo enquiry, directed by this Court. Therefore, the award of the Labout Court is arbitrary and contrary to law, equity and justice. Accordingly, the petitioner has prayed this Court to quash the said award.

9. The petitioner has challenged the award on various grounds, namely, the award is arbitrary, perverse and opposed to equity and justice; the Labour Court has failed to consider the scope of the de novo enquiry, the evidence of MW-1, and also to take note of for what reasons the temporary passes were issued, the nature of employment of the workman and the wages paid to him, the Attendance Register marked by the management in Ex.M-1 and the power of the Airport Manager in engaging casuals, the actual number of days the second respondent has worked and also that he had not actually worked for 240 days in a 12 month period or 120 days in a 6 month period, to attract the provisions of Section 25 B and F of the Act and also that the number of rulings relied on by the petitioner management before the Labour Court were not taken into account.

10. In the claim statement made by the second respondent workman before the Labour Court, it was contended that he was employed by the management as a Traffic Assistant with effect from 04.07.1987 to do various jobs such as TMFP Assistant, Baggage Assistant, Passage I.D.Staff etc. and at the relevant point of time, he was drawing a pay of Rs.750/- per month and he had unblemished service continuously from 04.07.1987 without any break. All of a sudden, on 07.04.1993, the management stopped him from work without giving any notice as per statutory provisions, nor any compensation was paid to him while the management retained his juniors in service. Therefore, the action of the management was arbitrary, illegal and in gross violation of Section 25 F and 25 G of the Act and

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since his termination was not by way of any disciplinary action, it is liable to be set aside.

11. Mr.S.B.S.Raman, learned counsel for the petitioner, would strenuously contend that the second respondent workman had not actually worked for 240 days in a 12 month period or 120 days in a 6 month period, to attract the provisions of Section 25 B of the Industrial Disputes Act, which is a pre-condition for application of Section 25 F of the Act and that the learned Labour Court has not considered the scope of Section 25 B, on the satisfaction of the conditions of which alone Section 25 F will apply. The learned counsel has further contended that the onus of proving the actual work for 240 days in the preceding 12 month period is on the workman and mere filing of an affidavit by the claimant is not sufficient. He also made a plea that in case of a workman, who was given casual employment by the Branch Manager, who had no power to appoint him in regular service, the burden of proving that he had actually worked for 240 days was on the workman, who claimed protection under Section 25 F. The learned counsel would contend that the Labour Court has failed to consider that unfair labour practice was neither pleaded nor alleged in the present case. Ultimately, the learned counsel would strongly assail the order of the Labour Court on the ground that the Labour Court has not considered the evidence of M.W.1 and the document marked as Ex.M-1, the Attendance Register and, therefore, it is contrary to law and perverse.

12. In support of his contentions, learned counsel for the petitioner has cited the following decisions :

(i) 1985 (I) L.L.J.539 (The Workmen of American Express International Banking Corporation Vs. The Management of American Express International Banking Corporation), wherein it is held by the Supreme Court as follows :

> "5. Section 25 of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under S.25 is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in S.25B of the

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Industrial Disputes Act. In the present case, the provision which is of relevance is S.25B(2) (a) (ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but most necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to S.25B (2) should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression 'actually worked under the employer'. The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression 'actually worked under the employer' is capable of comprehending the days during which the workman was in employment and was paid wages -and we see no impediment to so construe the expression - there is no reason why the expression should be limited by the explanation. To give it any other meaning then what we have done would bring the object of S.25 F very close to frustration. It is not necessary to give examples of how 25F may be frustrated as

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they are too obvious to be stated."

(ii) 2002 (I) L.L.J. 1053 (Range Forest Officer Vs. S.T.Hadimani), wherein the Supreme Court observed as follows :

> "2. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in *State of Gujarat v. Pratam Singh Narsinh Parmar*, 2001-I-L.L.J.-1118. In our opinion, the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in a year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr.Hegde appearing for the department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

(iii) 2002 (III) L.L.J.1111 (Essen Deiniki Vs. Rajiv Kumar), wherein the Supreme Court has held as follows :

> "14. Significantly, the appellant's

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contention does not run counter to the opinion expressed in *American Express*. It has been the definite contention of Mr.Rajnit Kumar that even the test laid down under American Express does not stand to acceptance of the workman's case. The requirement of the Statute of 240 days cannot be disputed and it is for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months' period. As noticed hereinbefore, it has been the definite case of the workman concerned whilst at the stage of evidence that he has not worked for 240 days, as noticed hereinbefore in this judgment more fully. And it is on this score Mr.Ranjit Kumar has been rather emphatic that the High Court has thus fallen into a grave error in reversing the order of the Labour Court. It is a finding of fact which the High Court cannot possibly overturn without assailing the order of the Labour Court as otherwise perverse. The High Court unfortunately has not dealt with the matter in that perspective."

"16. Having regard to the opinion of this Court in the last noted decision, question of affirmance of the impugned judgment cannot and does not arise more so by reason of the fact that even this Court searched in vain in regard to the availability of such an evidence. The High court, in our view, has thus committed a manifest error in reversing the order of the Labour Court."

(iv) 2003 (I) L.L.J. 1015 (Ravichandran N.S. Vs. Management of Thanthai Periyar Transport Corporation and Others), wherein this Court has held as follows :

"8. When an employee claims protection under Section 25-F of the Act by pleading that he had worked for 240 days, the burden is clearly on the workman, and unless he discharged the

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burden, he cannot expect to have his case for protection under Section 25-F of the Act accepted. Merely asserting the claim does not shift the burden to the management. It may be that in cases where all the circumstances indicate that the person had worked and the records are entirely with the employer, the Court may as has been held in the case of *H.D.Singh (supra)* draw the interference that the person had worked. But a mere assertion by itself is far from sufficient to cast the burden on the employer."

(v) 2006 (I) L.L.J.268 (Surendranagar Panchayat and Another v. Jethabhai Pithamberbhai), wherein the Supreme Court held as under :

"8. On the face of the aforesaid authorities, the Labour Court and the High Court committed an error in placing the burden on the employer to prove that the workman had not worked for 240 days with the employer. The burden of proof having been on the workman, he has to adduce an evidence in support of his contention that he has complied with the requirement of Section 25-B of the Industrial Disputes Act. In the present case, apart from examining himself in support of his contention, the workman did not produce any material to prove the fact that he worked for 240 days. In fact the employer had produced before the Labour Court the Attendance Register of the workman and Muster Roll clearly showing that the workman had not worked continuously in the preceding year with the employer or that he had worked with the employer for 240 days in the preceding 12 months prior to his alleged retrenchment. In the absence of evidence on record, the Labour Court and the High Court have committed an error in law and fact in directing reinstatement of the respondent-workman. That being the case, the award of the Labour Court and the

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judgment of the High Court are set aside. The appeal is allowed. However, in the circumstances of the case, there shall be no order as to costs. If the workman has been reinstated in pursuance of the orders of the Labour Court, salary and other emoluments paid to him shall not be recovered."

(vi) 2006 (I) L.L.J.998 (State of Gujarat Vs.Thakor Hathaji Mohanji), wherein the Supreme Court observed as follows :

"3.It is not possible for us to reopen the issue as to whether there was an abandonment of the work by the respondent or a termination of the respondent's services. The Labour Court has found that there was a termination and that finding cannot be said to be perverse. We may clarify that when a daily wager is reinstated, he/she is re-employed as a daily wager. The award cannot, by directing reinstatement, tantamount to regularisation of the workman's services. Continuity of service in the context of a daily wager means the maintenance of the seniority of the workman amongst other daily wagers."

13. On the other hand, Mr.Prakash Gokalaney, learned counsel for the second respondent, would contend that the Labour Court has given due consideration to the scope of the provisions under Section 25 B of the Act and thereby the Labour Court has applied Section 25 F. It is also strenuously contended by the learned counsel that the employment of workman continuously from 04.07.1987 without any break has been taken into account in the light of the provisions of the Act and that on and from 07.04.1993, the second respondent was denied employment without any notice and without payment of any compensation, as provided under the Act. While terminating the services of the second respondent, the management has retained the services of the juniors of the second respondent and therefore it is discriminatory. Lastly, the learned counsel would contend that when the termination is

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not by way of any disciplinary action, the action of the management cannot be sustained under law.

14. In support of his contentions, the learned counsel relied on the following decisions :

(i) AIR 1996 SUPREME COURT 2898 (Chief Conservator of Forests Vs. Jagannath Maruti Kondhare), wherein the Supreme Court held as follows :

> "22.We have given our due thought to the aforesaid rival contentions and, according to us, the object of State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large on the face

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of both the types of work. If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no security is required. We, therefore, answer the second question also against the appellants."

"29. ... but we find it difficult to limit the submission of Shri Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents-workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularisation to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the respondents is not one which would be available ipso facto to all the casual employees either of the Forest Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases."

(ii) AIR 2003 SUPREME COURT 3337 (U.P.Drugs and Pharmaceuticals Co.Ltd. Vs. Ramanuj Yadav), wherein the Supreme Court observed as follows :

"10. Under the aforesaid legislative background, the question involved is required to be considered. Section 2 (g) of the UP Act does not require a workman, to avail the benefit of the deeming provision of completion of one year of continuous service in the

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industry, to have worked for 240 days during 'preceding' period of 12 calandar months. The word 'preceding' has been used in S.25-B of the ID Act as incorporated in the year 1964. Section 2(g) does not use the word 'preceding'. The concept of 'preceding' was introduced in the ID Act so as to give complete and meaningful benefit of welfare legislation to the working class. The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma etc. v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another [(1981) 1 SCR 789] where this Court has observed that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

"11.Learned counsel for the appellant, however, relies upon Mohan Lal v. Management of M/s.Bharat Electronics Ltd. ((1981) 3 SCC 225]. In that case, the Court was considering the scope of S.25-B of the I.D.Act. It was observed that in order to invoke the fiction enacted in Cl.(2) (a) of S.25-B, it is necessary to determine first the relevant date i.e., the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. It was held that if these three factors are

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affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in Cl.(2) (a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in S.25-F. In Mohan Lal's case, the appellant was employed with the respondent from 8th December,1973. His services were abruptly terminated by letter dated 12th October, 1974 w.e.f.October 19,1974. This Court said that it is not necessary for the purpose of Cl.(2)(a) of S.25-B that workman should be in service for a period of one year. It was held that if he is in service for a period of one year and that service is continuous service within the meaning of Cl.(1), his services would be governed by Cl.(1) and his case need not be covered by Cl. (2). Clause (2) envisages the situation not governed by Cl.(1). Clause (2) (a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backward and just preceding the relevant date the date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decision in the case of Mohan Lal does not lay down that if a workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of S.25-B. The question with which we are concerned was not under consideration in Mohan Lal's case. If the view point propounded by the

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management is accepted, then in every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance of S.6-N of the UP Act, despite his having worked for number of years and for more than 240 days in each year except the last. Such an intention cannot be attributed to the UP Act. In the present case, as already noticed, the finding of the Labour Court is that the respondents worked for more than 240 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination, the termination was held by the Labour Court not to be violative of S.6-N. Reference may also be made to the decision in Ramakrishna Ramnath v. Presiding Officer, Labour Court,Nagpur, and another [(1970) 3 SCC 67] where this Court observed that the provision requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment does not show that a workman after satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in U.P.State Co-operative Land Development Bank Ltd. v. Taz Mulk Ansari and others (1994 Supp (2) SCC 745) relied upon by learned counsel for the appellant has no applicability since that was a case of Cl.(a) of S.6-N and, therefore, S.2 (g) had no relevance."

"12.The High Court has rightly concluded that the termination of the respondents was in violation of S.6-N

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read with S.2(g) of the UP Act."

(iii) AIR 2006 SUPREME COURT 355 (R.M.Yellatti Vs. Assistant Executive Engineer), wherein the Supreme Court has held as follows :

> "17.Applying the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under

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Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case."

"18.Now applying the above decision to the facts of the present case, we find that the workman herein had stepped in the witness box. He had called upon the management to produce the nominal muster rolls for the period commencing from 22.11.1988 to 20.6.1994. This period is the period borne out by the certificate (Ex.W1) issued by the former Asstt. Executive Engineer. The evidence in rebuttal from the side of the management needs to be noticed. The management produced five nominal muster rolls (NMRs), out of which 3 NMRs.Ex.M1, Ex.M2 and Ex.M3, did not even relate to the concerned period. The relevant NMRs produced by the management were Ex.M4 and Ex.M5, which indicated that the workmen had worked for 43 days during the period 21.1.1994 to 20.2.1994 and 21.3.1994 to 20.4.1994 respectively. There is no explanation from the side of the management as to why for the remaining period the nominal muster rolls were not produced. The labour court has rightly held that there is nothing to disbelieve the certificate (Ex.W1).... we are of the view that the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ex.W1). In the circumstances, the Division Bench of the High Court had erred in interfering with the concurrent findings of fact."

15. I have heard the learned counsel on either side and also given careful consideration to their submissions and the rulings relied on by them. I have also perused the impugned award and the documents filed in support of the case.

16. Before proceeding with this case, it would be useful

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to refer to the earlier findings of this Court in W.P.No.1958 of 1997, in paras 6,7 and 8, which read as follows :

> "6. Unfortunately, the second respondent-Labour Court has proceeded on the footing that there was no employer-employee relationship between the petitioner and the first respondent and therefore there was no scope to grant any relief. In such circumstances, when once it is held that the overwhelming evidence placed by the petitioner before the second respondent-Labour Court established beyond doubt that the petitioner was very much in the service of the first respondent, the consequential question as to justification of non-employment of the petitioner will have to be gone into. Since that exercise was not carried out by the second respondent and the counter statement filed by the first respondent discloses that even according to it the petitioner was not in continuous service, I am of the view that while setting aside the award impugned in the writ petition, the second respondent should be directed to hold a de novo enquiry on this limited question as to the justification of the non-employment and the relief if any to be granted to the petitioner, in the event of the second respondent-Labour Court reaching the conclusion that the non-employment was not justified.
>
> 7.Therefore, the writ petition stands allowed. The award impugned in the writ petition is set aside and the dispute is remitted back to the second respondent for holding a de novo enquiry as to the question relating to the justification of the non-employment of the petitioner. It is however made clear that the question that the petitioner was a workman of the first respondent is fully established and therefore the scope of any further enquiry by the second respondent should only be on

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> the question as regards the justification of the non-employment. It is open to the first respondent to substantiate its stand in the counter filed before the second respondent namely that the petitioner was not in its continuous service so as to attract compliance of Section 25F of the Industrial Disputes Act or that his non-employment was even otherwise justified.
>
> 8. Since the non-employment was of the year 1993, the second respondent-Labour Court is directed to conclude the proceedings and pass final award within three months from the date of receipt of the records."

17. It is seen that in the earlier Writ Petition, the challenge to the award of the Labour Court has been considered by this Court and the said Writ Petition stood allowed, holding that the award impugned in the Writ Petition was set aside and the dispute was remitted back to the Labour Court for holding a de novo enquiry as to the question relating to the justification of the non-employment of the petitioner/workman. In the very same order, the employment of the petitioner/workman with the first respondent was fully justified and, therefore, the scope of any further enquiry by the second respondent should only be on the question as regards the justification of non-employment.

18. In view of the order passed by this Court in the earlier Writ Petition, the employment of the workman with the petitioner management has become final and I am not inclined to traverse any of the findings with regard to his employment. The only question left out is, after the remand of the matter to the Labour Court for a de novo enquiry, to decide about the question of justification of non-employment of the second respondent/workman.

19. Learned counsel for the petitioner has produced a typed set of papers pertaining to the earlier Writ Petition, in which the material regarding examination and cross-examination of M.W.1 has been filed and the same has been perused by me. After remand, a vital document, namely, xerox copy of the Attendance Register from April,1989 to September,1997, has been filed and it is marked as Ex.M-1.

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In addition, M.W.1, the management witness, was recalled to the witness box and he had deposed about the document Ex.M-1, filed by the management and he was also cross-examined. No further oral evidence was let in on the side of the petitioner. M.W.1 had deposed that there was no contra evidence to disprove that the workman was not employed for 240 days. M.W.1 had also deposed that "he does not know how many days the second respondent has worked". The Labour Court has evidenced the witness of M.W.1 and also Ex.M.-1, the Attendance Register, and on a perusal of these two material evidences, has come to the conclusion that the management has wantonly and wilfully suppressed certain facts from the purview of the Court and the Labour Court also took cognizance of Ex.W-1, xerox copy of the appointment order, issued to the workman on 04.07.1987, and a series of xerox copies of the passes issued by the management in Exs.W-2 to W-15, and they would reveal that the second respondent worked under the petitioner ranging from 150 days in 1987 to 330 days in 1992 and that he was continuously working from 1987 onwards. It is also evident from the evidence of M.W.1 that there was a break once in three months, to avoid continuity of service. Only because of the action of the management, the workman has been terminated without any order and he has been stopped from service and therefore the conduct of the petitioner will amount to victimisation.

20. Pursuant to the remand, the Labour Court perused the records, particularly, the Attendance Register, which was not produced earlier. Though it was the duty of the management to produce the Attendance Register at the inception, the same was produced only after a lapse of 11 years. Therefore, the plea made by the petitioner management that the Attendance Register was maintained only for permanent employees cannot be sustained. It is also seen from the evidence of M.W.1 that wages were paid by him to the workmen, who were employed by him intermittently and the vouchers were received from the workmen and they were filed before the management. As per the above vouchers, the management claimed the amount and those vouchers have not been produced before the Court. Therefore, the Labour Court took a strong exception to the non-production of the documents and held that M.W.1, the management witness, has suppressed the relevant documents from the purview of the Court and that, in fact, the evidence of M.W.1 has actually supported the case of the workman and, accordingly, passed the award, holding that non-employment of the workman is not justified and the workman is entitled to the relief of

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reinstatement with back wages and all other monetary benefits, which award is impugned in this Writ Petition.

21. Section 25 B of the Industrial Disputes Act reads as follows :

25.B. Definition of continuous service.

For the purpose of this Chapter, -

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or on accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman ;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case ;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case."

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22. Section 25F of the Act reads as under :

25F. Conditions precedent to retrenchment of workmen.

> No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reason for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice ;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

23. Before arriving at the conclusion, it is relevant to take note of the repeated rulings of the Supreme Court about the concept of labour legislation, particularly, the beneficial legislation. The word 'preceding' has been used in S.25-B of the ID Act as incorporated in the year 1964. Section 2(g) does not use the word 'preceding'. The concept of 'preceding' was introduced in the ID Act so as to give complete and meaningful benefit of welfare legislation to the working class. The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma etc. v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another [(1981) 1 SCR 789] where the Supreme Court has observed that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is

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not to make inroads by making etymological excursions.

24. Also, in the recent ruling of the Supreme Court, reported in AIR 2006 SUPREME COURT 355 in the case of R.M.Yellatti v. Assistant Executive Engineer, the Hon'ble Supreme Court, while analysing the various decisions of the Supreme Court, while applying the general principles and the burden of proof, has laid down a rule of law that the burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case.

25. Therefore, in the case on hand, the workman has produced the documents Exs.W-1 and W-2 to W-15, indicating the number of days he worked and the workman has not been terminated by an order and he has been stopped from service, as accepted by the management witness. Though the Attendance Register was available, it was not produced earlier and, only on remand by this Court, an enquiry was conducted and ultimately the evidence of M.W.1 and the Attendance Register, marked as Ex.M-1, have been taken into cognizance by the Labour Court and applying the various decisions of the Supreme Court cited supra and distinguishing the number of rulings relied on by the management, the Labour Court ultimately came to the conclusion that non-employment of the workman is not justified and also holding that he is entitled to the relief of reinstatement with back wages and all other monetary benefits.

26. The various rulings relied on by the learned counsel for the petitioner management about the provisions and the applicability of Section 25B and then the relief claimed under Section 25 F would indicate as to how 240 days have to be taken into account for the purpose of deciding the non-employment. The learned counsel for the management has contended that it is the workman that has to prove by producing salary certificate for 240 days or record of

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appointment or engagement for the said period.

27. The concept of the said argument advanced by the learned counsel for the management has been dispelled by the recent ruling of the Supreme Court, indicating what are all the circumstances when any document is in the custody of the workman and what are all the documents in the custody of the management and whose burden to produce the same before the Labour Court.

28. In this case, the management has not produced the relevant documents, particularly, Ex.M-1 and, therefore, the Labour Court took a different view and, ultimately, after remanding the matter by this Court, the Labour Court has applied its mind to go into the provisions of Section 25 B and, on a perusal of Ex.M-1 and also the evidence of M.W.1, arrived at the proper conclusion that the workman is entitled to reinstatement with all monetary benefits, by holding that the non-employment of the workman by the management is not justified.

29. In view of the proper conclusion arrived at by the Labour Court on appreciation of the evidence after remand and the decision arrived at by the Labour Court is in no way legally infirmed, I have no hesitation to uphold the award passed by the Labour Court. Therefore, this Writ Petition deserves no consideration and the same is, accordingly, dismissed without any order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Presiding Officer,
Principal Labour Court,
Chennai.

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.S.B.S.Raman, Advocate Sr 33859

AKR (CO)
km/19.6.

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